

Frank J. Kelley


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ATTORNEY GENERAL OF MICHIGAN
EMERITUS
(1982 - 1998)

November 15, 2012

Dear Chairman Lund:

The attached information is self-explanatory. I forwarded the material to you and others.

A handwritten signature in black ink, reading "Frank J. Kelley". The signature is written in a cursive style with a large, stylized "K" and a checkmark-like flourish at the end.

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ATTORNEY GENERAL OF MICHIGAN
EMERITUS
(1962 - 1998)

November 15, 2012

I wrote the attached legal analysis on my own volition in order to be of assistance to legislators, regulators and the public to understand the proposed changes to the Blue Cross Statute of 1980.

A handwritten signature in black ink, reading "Frank J. Kelley". The signature is written in a cursive style with a large, stylized "K" at the end.

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ATTORNEY GENERAL OF MICHIGAN
EMERITUS
(1962 - 1998)

November 15, 2012

To Whom it May Concern:

Because of my experiences dealing with Blue Cross Blue Shield in my capacity as Michigan Attorney General from 1962 through 1998, I feel compelled now to speak out and give my personal opinion about the proposed conversion from an insurer of last resort to a nonprofit company. This change, suggested by Governor Snyder, has already been approved by the Michigan Senate and is now before the Michigan House of Representatives for final action. I wish to emphasize that I represent no one in the matter, and offer my views only to aid the legislators and regulators who are in the process of updating the 1980 Blue Shield act.

Beginning with a statute in 1939 and amendments in 1980, the legislature determined that Blue Cross should serve as a safety net, known as an insurer of last resort, by offering coverage to people with pre-existing conditions. In Michigan, the Blues still serve alone in this role, as other health insurers are allowed to deny coverage to applicants with pre-existing conditions. This has created two systems in Michigan, and will remain the case until January 1, 2014. At that time, federal law will require all insurers to cover everyone. This is a big change that antiquates one of the foundational aspects of the 1939 law governing the Blues. Additionally, the 1980 amendments require Blue Cross to subsidize coverage and promote access to affordable healthcare. In exchange, the Blues were given exemptions from state and local taxes originally granted in 1939.

Governor Rick Snyder has proposed a reform plan that regulates Blue Cross along with all other insurance companies under a single state law. His plan ensures that Blue Cross remains nonprofit and based in Michigan. Importantly, he requires Blue Cross to pay its taxes, and contribute \$1.5 billion over eighteen years to create a separate fund to invest in programs to promote healthcare affordability and access, and to protect the vulnerable. This gives Blue Cross a mission that isn't dictated by thirty-two-year-old needs, but that is right for the future.

The nonprofit status of Blue Cross and its ongoing mission hold value for Michigan. The legislation should prohibit Blue Cross from becoming a for-profit company owned by stockholders. In the unlikely event that a sale of Blue Cross for a for-profit company transpires in the future, the state should be granted the power to undertake an effort to determine the fair market value of Blue Cross at the time of sale and reinvest that amount in continuing the Blues' mission.

The Governor's plan seeks to create a fair and balanced set of rules for all health insurers in Michigan. Importantly, it recognizes that new federal laws have improved consumer protections above and beyond those provided by present state law. Starting January 1, 2014, coverage will be guaranteed. Community rating will ensure that sick people aren't discriminated against on the price of their coverage. Rate increases should be by law reviewed strongly at both the federal and state levels. An online marketplace will be created, giving Michigan consumers a vast number of choices of health plan options and fostering greater competition.

In reviewing the proposed changes recommended by the Governor and others to the Blue Shield law, I am convinced that if the legislature provides the statutory guidelines discussed above, and preserves the right of future intervention, the public interest will be served and protected. This proposed new legislation should be enacted.

Sincerely yours,



Frank J. Kelley

FJK/pa